

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
In Admiralty
CIVIL ACTION NO. 4:12-CV-39-FL

BRANCH BANKING AND TRUST
COMPANY,

Plaintiff,

v.

The Vessel, MAGGIE, Official Number:
1205274, her engines, tackle, electronics and
apparel, etc., in rem and Calvert R. Bryant, Jr.
and Calvert R. Bryant, III, and Maggie
Sportfishing, LLC;

Defendants,

ORDER

Plaintiff, Branch Banking and Trust Company, has filed a Motion for Judgment on the Pleadings or, in the alternative, a Motion for Summary Judgment, seeking a declaration from the Court that all liens against the vessel MAGGIE, Official Number: 1205274 in existence prior to its sale on October 19, 2012 are terminated and that Bob Bleecker purchased the vessel free and clear of all liens and encumbrances and that the Court direct the payment of the proceeds of the sale to the Plaintiff after payment of any sums due the United States Marshal incidental to this action. Pursuant to Federal Rules of Civil Procedure, Rule 56, Branch Banking and Trust Company's Motion for Summary Judgment is granted.

STATEMENT OF THE CASE

On March 16, 2012 the Plaintiff filed a Complaint in rem against the vessel MAGGIE, Official Number: 1205274, for foreclosure of a preferred ships mortgage. Said Complaint did not seek a deficiency judgment against the mortgagor. On May 3, 2012, the vessel was arrested pursuant to a warrant issued by this Court. Publication required by Supplemental Rule C(4),

Federal Rules of Civil Procedure was made in the News & Observer, Raleigh, North Carolina on the 24th day of May, 2012.

The vessel's owner and mortgagor was served with Summons and Complaint and with Notice of Arrest of Vessel pursuant to Federal Rules of Civil Procedure Supplementary Rules for Admiralty and Maritime Claims, Rule C, and pursuant to Local Rule C(3)(b)(1) and (c) on May 10, 2012 and June 2, 2012.

A lien claimant, Suntrust Bank, was served with Notice of the Arrest of the vessel MAGGIE pursuant to Federal Rules of Civil Procedure Supplementary Rules for Admiralty and Maritime Claims, Rule C, and pursuant to Local Rule C(3)(b)(1) and (c) on June 4, 2012.

No claim for the vessel or any other answer to the Complaint has been filed by anyone claiming to have an interest in said vessel and that the time for which to file a claim for the vessel or to file an answer to the Complaint has not been extended by the Court.

Maggie Sportsfishing, LLC, Calvert R. Bryant, Jr., Calvert R. Bryant, III and Suntrust Bank failed to plead or appear and did not file a claim for said vessel and were subject to default and a Motion for Entry of Default was filed by the Plaintiff herein and the default of Maggie Sportsfishing, LLC, Calvert R. Bryant, Jr., Calvert R. Bryant, III and Suntrust Bank was entered by Julie A. Richards, Clerk of Court, United States District Court, Eastern District of North Carolina on the 30th day of July, 2012.

The vessel was sold on the 19th day of October, 2012 pursuant to an Amended Order of Sale issued on the 25th day of September, 2012. Bob Bleecker was the high bidder at said sale. Said sale was confirmed by Order entered on the 30th day of October, 2012.

On the 5th day of November, 2012 Plaintiff filed its Motion for Judgment on the Pleadings or, in the alternative, Summary Judgment. The Plaintiff sought a decree from this

Court terminating any and all claims existing against the vessel at the time of its sale on October 19, 2012 and an Order directing the proceeds of the sale of the vessel MAGGIE, after payment of any sum due the United States Marshal incidental to this action, be paid to the Plaintiff, Branch Banking and Trust Company.

DISCUSSION

The foreclosure of a ships mortgage is governed by 46 United States Code, Chapter 313, Commercial Instruments and Maritime Liens. 46 U.S.C. § 31326(a) provides:

§ 31326. COURT SALES TO ENFORCE PREFERRED MORTGAGE LIENS AND MARITIME LIENS AND PRIORITY OF CLAIMS

- (a) When a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title [46 USCS § (e)(2)], and the vessel is sold free of all those claims.

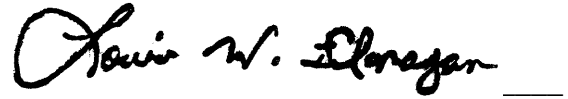
CONCLUSION

Branch Banking and Trust Company's Motion for Summary Judgment is GRANTED. The Preferred Ships Mortgage executed by the owner of the vessel, Calvert R. Bryant, Jr. and Calvert R. Bryant, III to Branch Banking and Trust Company is declared a valid and subsisting lien on the vessel MAGGIE, superior to the interest, liens or claims of any and all persons, firms or corporations whatsoever. All other liens against the vessel MAGGIE, Official Number 1205274 existing against said vessel, whether asserted or not, at the time of its sale on October 19, 2012 at twelve o'clock p.m. are hereby terminated and extinguished. Bob Bleecker purchased said vessel on said date free and clear of all liens and encumbrances.

The Clerk of this Court is hereby ordered to pay the proceeds of the sale of the vessel

MAGGIE, after payment of any sum due the United States Marshal incidental to this action, to the Plaintiff, Branch Banking and Trust Company, in care of its attorneys, Wheatly, Wheatly, Weeks, Lupton & Massie, P.A.

SO ORDERED. This the 6th day of November, 2012.

A handwritten signature in black ink, reading "Louise W. Flanagan", followed by a horizontal line.

Honorable Louise W. Flanagan